

Henry, VA

NS

290-304X



## COMMONWEALTH of VIRGINIA

### DEPARTMENT OF ENVIRONMENTAL QUALITY

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August 28, 2008

Surface Transportation Board  
395 E Street, S.W.,  
Room 1106  
Washington, D.C. 20423-0001

RE: Environmental Assessment of the Railway Abandonment, Norfolk Southern  
Railway Company, Henry County, DEQ # 08-177F.

Docket No. AB-290 (Sub-No. 304X),

Dear Sir/Madam:

The Department of Environmental Quality (DEQ) has completed its review of the Environmental Report (ER) for the above-mentioned abandonment of rail line in Henry County. DEQ is responsible for coordinating Virginia's review of federal environmental documents prepared pursuant to the National Environmental Policy Act and responding to appropriate federal officials on behalf of the Commonwealth. DEQ did not coordinate the review of this ER because of the scope of the proposal and the limited time allowed to submit comments.

### Project Description

According to the ER, Norfolk Southern Railway Company (NSR) plans to file a request with the Surface Transportation Board (STB) to abandon approximately 4.2 miles of railroad near the City of Martinsville, Virginia. The rail line, known as the Hill Top Branch, extends between milepost DW 41.6 and milepost DW 45.8. If approved, NSR will remove the rail, ties and other railroad appurtenances. The line is no longer used for rail freight or passenger traffic. The NSR does not have fee title to the entire right-of-way underlying the line segment proposed for abandonment and therefore, NSR does not have a contiguous corridor available for public use. However, Henry County has expressed an interest in acquiring the line segment for possible interim trail use.

## GENERAL NATURAL RESOURCE GUIDANCE

The following information provides general guidance for potential project impacts on natural resources that may or may not have been addressed in the ER. Please note that all relevant state permits and approvals must be acquired by NSR prior to any project activities. For more specific comments, contact the appropriate agency identified for each resource.

**1. Surface Water and Subaqueous Lands Impacts.** The ER (Section 9, Water) states that the railroad crosses one small waterway at Jones Creek, milepost DW 44.40. The geometry of the roadbed will not be altered and no in-stream work is proposed.

The State Water Control Board (SWCB) promulgates Virginia's water regulations, covering a variety of permits to include Virginia Pollutant Discharge Elimination System Permit, Virginia Pollution Abatement Permit, Surface and Groundwater Withdrawal Permit, and the Virginia Water Protection (VWP) Permit. The VWP Permit is a State permit which governs wetlands, surface water, and surface water withdrawals/impoundments. It also serves as § 401 certification of the federal Clean Water Act § 404 permits for dredge and fill activities in waters of the U.S. The VWP Permit Program is under the Office of Wetlands and Water Protection and Compliance, within the DEQ Division of Water Quality Programs. DEQ's seven regional offices perform permit application reviews and issue permits for the covered activities.

Also, the Virginia Marine Resources Commission (VMRC), pursuant to Chapter 12 of Title 28.2 of the Code of Virginia, is responsible for issuing permits for encroachments in, on, or over State-owned submerged lands throughout the Commonwealth. Accordingly, if any portion of the salvage projects involve any encroachments channelward of ordinary high water along natural rivers and streams, a permit may be required from VMRC.

The Virginia Marine Resources Commission serves as the clearinghouse for the Joint Permit Application (JPA) used by the:

- U.S. Army Corps of Engineers (Corps) for issuing permits pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act;
- DEQ for issuance of a Virginia Water Protection Permit;
- VMRC for encroachments on or over state-owned subaqueous beds as well as tidal wetlands; and
- local wetlands board for impacts to wetlands.

For any project activities with the potential to impact subaqueous lands and/or surface waters, contact the VMRC for a JPA. VMRC will distribute the application to the appropriate agencies. Each agency will conduct its review and respond.

**2. Non-Point Source Pollution Control.** According to the Department of Conservation and Recreation (DCR), projects on privately- or locality-owned lands that involve a land-disturbing activity of 10,000 square feet require that the property owner submit a

site-specific erosion and sediment control (ESC) plan to the appropriate local government for review and approval pursuant to the local ESC ordinances. The ESC plan must be approved prior to initiation of any land disturbance at the project site. All regulated land-disturbing activities associated with the project must be covered by an approved plan. Note that dependent on local requirements, a separate stormwater management (SWM) plan may be required for this project. Local ESC and SWM requirements should be requested through the Henry County.

Also, DCR is responsible for the issuance, denial, revocation, termination and enforcement of the Virginia Stormwater Management Program (VSMP) General Permit for Stormwater Discharges from Construction Activities (previously known as Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Stormwater Discharges from Construction Activities) related to municipal separate storm sewer systems (MS4s) and construction activities for the control of stormwater discharges from MS4s and land disturbing activities under the Virginia Stormwater Management Program. Therefore, for projects involving land-disturbing activities greater of 1 acre or more, the applicant or its authorized agent is required to apply for registration coverage under the General Permit for Discharges of Stormwater from Construction Activities. General information and registration forms for the General Permit are available on DCR's website at <http://www.dcr.virginia.gov/sw/vsmp.htm#geninfo>.

**3. Air Pollution Control.** DEQ-Air Division states that during construction, fugitive dust must be kept to a minimum by using control methods outlined in 9 VAC 5-50-60 *et seq.* of the Regulations for the Control and Abatement of Air Pollution. These precautions include, but are not limited to, the following:

- Use, where possible, of water or chemicals for dust control;
- Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials;
- Covering of open equipment for conveying materials; and
- Prompt removal of spilled or tracked dirt or other materials from paved streets and removal of dried sediments resulting from soil erosion.

If project activities include open burning, this activity must meet the requirements under 9 VAC 5-40-5600 *et seq.* of the Regulations for open burning, and it may require a permit. The Regulations provide for, but do not require, the local adoption of a model ordinance concerning open burning. In addition, local government officials should be contacted to determine what local requirements, if any, exist. For additional information, please contact DEQ's West Central Regional Office at (540) 562-6700.

**4. Solid and Hazardous Wastes.** The ER (Section 7, Safety) states that NSR has no knowledge of hazardous waste sites or sites where there have been known hazardous material spills on the right-of-way or in adjacent areas. DEQ administers the Virginia Solid Waste Management Regulations and the Virginia Hazardous Waste Management Regulations. Any soil that is suspected of contamination or wastes that are generated must be tested and disposed of in accordance with applicable Federal, State, and local laws and regulations.

Also, any structures that are to be demolished or removed should be checked for asbestos-containing materials (ACM) and lead-based paint prior to demolition. If ACM or LBP are found, in addition to the federal waste-related regulations mentioned above, State regulations 9VAC 20-80-640 for ACM and 9VAC 20-60-261 for LBP must be followed.

- *Asbestos Materials.* It is the responsibility of the owner or operator of a renovation or demolition activity, prior to the commencement of the renovation or demolition, to thoroughly inspect the affected part of the facility where the operation will occur for the presence of asbestos, including Category I and Category II nonfriable asbestos containing material (ACM). Upon classification as friable or non-friable, all waste ACM shall be disposed of in accordance with the Virginia Solid Waste Management Regulations (9 VAC 20-80-640), and transported in accordance with the Virginia regulations governing Transportation of Hazardous Materials (9 VAC 20-110-10 et seq.). Contact the DEQ Waste Management Program for additional information, (804) 698-4021, and the Department of Labor and Industry, Ronald L. Graham at (804) 371-0444.
- *Lead-Based Paint.* If applicable, the proposed project must comply with the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) regulations, and with the Virginia Lead-Based Paint Activities Rules and Regulations. For additional information regarding these requirements contact the Department of Professional and Occupational Regulation, David Dick at (804) 367-8588.

**5. Natural Heritage Resources.** The ER (Section 8, Biological Resources) states that a consultation from the U.S. Fish and Wildlife Service was requested. Also, the line segment does not pass through any state or national parks or forests or wildlife sanctuaries.

However, the ER does not indicate that any state agencies were contacted in relation to the rail line abandonment. The Department of Conservation and Recreation's Division of Natural Heritage (DNH) can search its Biotics Data System (BDS) for occurrences of natural heritage resources in the area of any future construction related to this proposal. Natural heritage resources are defined as the habitat of rare, threatened, or endangered animal and plant species, unique or exemplary natural communities, and significant geologic communities.

Under a Memorandum of Agreement established between the Virginia Department of Agriculture and Consumer Services (VDACS) and the Department of Conservation and Recreation (DCR), DCR has the authority to report for VDACS on state-listed plant and insect species. We recommend that DCR-DNH be contacted at (804) 786-7951, to secure updated information on natural heritage resources before any project is implemented.

**6. Wildlife Resources.** The Department of Game and Inland Fisheries (DGIF), as the Commonwealth's wildlife and freshwater fish management agency, exercises

enforcement and regulatory jurisdiction over wildlife and freshwater fish, including state or federally listed endangered or threatened species, but excluding listed insects (Virginia Code Title 29.1). The DGIF is a consulting agency under the U.S. Fish and Wildlife Coordination Act (16 U.S.C. sections 661 *et. seq.*) and provides environmental analysis of projects or permit applications coordinated through DEQ and several other state and federal agencies. DGIF determines likely impacts upon fish and wildlife resources and habitat, and recommends appropriate measures to avoid, reduce, or compensate for those impacts. For more information, see the DGIF website at [www.dgif.state.va.us](http://www.dgif.state.va.us) or contact Amy Ewing at (804) 367-2211.

**7. Historic Structures and Archaeological Resources.** The ER does not address historic resources. *Section 106 of the National Historic and Preservation Act of 1966*, as amended, requires that activities that receive federal approval must consider effects to properties that are listed or eligible for listing on the National Register of Historic Places. The Department of Historic Resources (DHR) conducts reviews of projects to determine their effect on historic structures or cultural resources. For additional information and coordination, contact DHR.

**8. Rails to Trails.** Virginia's Department of Conservation and Recreation (DCR) works throughout the state to develop greenways and trails. No formal process has been established at the state level to work with railroad companies in the negotiation of converting railroad corridors into recreational trails. For additional information on the Commonwealth's recreational corridors, please contact Robert Munson at (804) 786-6140.

## REGULATORY AND COORDINATION NEEDS

Based on the limited information provided in the ER, the following approvals may be required:

**1. Surface Water and Subaqueous Lands Impacts.** Any impacts to streams may require a Virginia Water Protection (VWP) permit issued by DEQ (9 VAC 25-210-50). Application for VWP permit may be made by submitting a Joint Permit Application (JPA) to the Virginia Marine Resource Commission (VMRC), which acts as the clearinghouse for JPAs and distributes the application to the appropriate agency. Upon receipt of a JPA for the proposed surface water and wetland impacts, VWP permit staff at DEQ's West Central Regional Office will review the proposed project in accordance with VWP permit regulations and guidance. Questions regarding the VWP permit process may be directed to Kevin Harlow, DEQ-West Central Regional Office, at (540) 562-6788.

In addition, project impacts to subaqueous lands would require a permit from VMRC, pursuant to Section 28.2-1204 of the Code of Virginia. As with water and wetland permitting, subaqueous lands permitting may be accomplished with the submission of a JPA to the VMRC. For additional information, contact Dan Bacon of the VMRC at (757) 247-2256.

**2. Erosion and Sediment Control and Stormwater Management.** If this project disturbs 10,000 square feet or more of land, an erosion and sediment control (ESC) plan may be required (VESCL §10.1-560, §10.1-564; VESCR §4VAC50-30-30, §4VAC50-30-100). As with the ESC Plan, a project-specific Stormwater Management Plan is required for all projects involving a regulated activity. All specifications and plans must be prepared in accordance with the current versions of the Virginia Stormwater Management Law and the *Virginia Stormwater Management Regulations* (4 VAC 3-20-210 through 3-20-245). NSR should contact the Department of Conservation and Recreation's Division of Soil and Water Conservation Clarkesville Regional Office (telephone, (434) 374-3648) or Henry County for guidance.

For projects involving land-disturbing activities greater than 1 acre, application for registration coverage under the Virginia Stormwater Management Program General Permit for Discharges of Stormwater from Construction Activities is required. Specific questions regarding the Stormwater Management Program requirements should be directed to Holly Sepety, DCR, at (804) 225-2613.

**3. Air Quality Regulations.** This project may be subject to air regulations administered by the Department of Environmental Quality. The following sections of Virginia Administrative Code may be applicable:

- 9 VAC 5-50-60 *et seq.* governing fugitive dust emissions; and
- 9 VAC 5-40-5600 *et seq.*, for open burning.

For more information contact the DEQ-West Central Regional Office at (540) 562-6700.

**4. Solid and Hazardous Wastes.** All solid waste, hazardous waste, and hazardous materials must be managed in accordance with all applicable federal, state, and local environmental regulations. Some of the applicable State laws and regulations are:

- Virginia Waste Management Act (Code of Virginia Section 10.1-1400 *et seq.*);
- Virginia Hazardous Waste Management Regulations (VHWMR) (9VAC 20-60);
- Virginia Solid Waste Management Regulations (VSWMR) (9VAC 20-80); and
- Virginia Regulations for the Transportation of Hazardous Materials (9VAC 20-110).

Some of the applicable Federal laws and regulations are:

- Resource Conservation and Recovery Act (RCRA) (42 U.S.C. Section 6901 *et seq.* and the applicable regulations contained in Title 40 of the Code of Federal Regulations); and
- U.S. Department of Transportation Rules for Transportation of Hazardous materials (49 CFR Part 107).

Contact DEQ's West Central Regional Office at (540) 562-6700, concerning location and availability of suitable waste management facilities in the project area or if free product, discolored soils, or other evidence of contaminated soils are encountered.

**5. Historic Resources.** To ensure compliance with *Section 106 of the National Historic and Preservation Act of 1966*, as amended, contact Ethel Eaton of DHR at (804) 367-2323, ext. 112.

Thank you for the opportunity to review this project. We appreciate your interest in complying with Virginia's environmental legislation. If you have any questions regarding these comments, please do not hesitate to call me at (804) 698-4325 or Anne Pinion at (804) 698-4488.

Sincerely,



Ellie L. Irons, Manager  
Office of Environmental Impact Review

CC. Kevin Harlow, DEQ-WCRO  
Robert Munson, DCR  
Kathy Headrick, NSR